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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,807	03/28/2006	Henri Wautier	288713US0PCT	7683
22850 7590 03/18/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MULLS, JEFFREY C				
ART UNIT		PAPER NUMBER		
1796				
NOTIFICATION DATE		DELIVERY MODE		
03/18/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

**Application No.**

10/573,807

**Applicant(s)**

WAUTIER ET AL.

**Examiner**

Jeffrey C. Mullis

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 27-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/309)  
Paper No(s)/Mail Date 4-30-07: 7-12-06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Paragraph 131 of applicants published specification refers to Priex 25050 as well as Priex 125050 as though they are identical and this therefore appears to be a misprint. Correction or explanation is required.

Claims 27-49 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the specific blends of the Examples, does not reasonably provide enablement for blends or processes of improving properties for blends other than the specific blends of the examples. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. Note paragraph 7 of applicants published specification where it is disclosed that it is "entirely surprising" that a synergistic effect could be obtained and that properties of the resulting blend could be improved relative to the components. It is noted that such a process in which improved properties relative to the components is actually claimed despite the fact that no disclosure regarding how the "judicious choice" of polypropylenes are to be made except of course specific tradenamed materials are used in applicants Examples. Note also paragraph 5 of applicants' published specification which discloses that prior art methods in which modified and unmodified polyolefins are blended fail to achieve applicants' limitations of improved characteristics relative to the components used. Nonetheless applicants specification discloses nothing regarding their process except modified and unmodified polyolefins are blended and it is not clear how the process of applicants specification differs from that of for instance GB 1335791 ( numerous other prior art references disclosing the blending of modified and

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unmodified polypropylenes or polyolefins) discussed at paragraph 5 of applicants specification except for use of the specific tradenamed material of the specification and it is therefore not clear how the characteristics of the claims are to be achieved except for use of the specific materials of the examples.

It is not the position of the Examiner that use of tradenames in the claims would be acceptable.

Claims 27-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terms "high" and "low" are subjective and therefore unclear.

Claim 27 recites replacing all the P2 in C2 with P1 despite the fact that no component is recited to be in C2 but P2 and it is therefore unclear how C2 is different from P2. Furthermore it is not clear if what follows "C1" is meant to be a definition of "C1" and if not it is not clear what "C1" is. Claims 39 and 46 are similarly unclear in that all of the recited component of "C1" is said to be replaced nor is the definition of C2 clear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27-49 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ding et al. (US 2002/0107329).

It is noted that the only actual process step recited by the instant claims is adding an unmodified polyolefin to a modified one such as is taught by paragraph 93 of the reference. Note Table 1 on page 10 where the blended maleic anhydride modified polyolefin with polyolefin in for instance Example 3 has improved tensile strength as compared to comparative example 1 with no polypropylene.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al., 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference between the product of a product-by-process claim and a prior art product which reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

Claims 27-49 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over VanBrederode et al. (US 3886227).

Note Table III for unmodified polyolefins "E-115" and "E-117" as well as modified polyolefins "D-540" and 541 and note Table IV for blends of these materials as compositions A and B having improved tensile strength over either material.

Claims 27-49 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mitsui Petrochemical (GB 1335791), cited by applicants in paragraph 5 of their published application.

Note Table 1 on page 4 of the patent where blends of modified and modified polyolefins in Examples 1 and 2 both have tensile strength of 240 Kg/square meter vs only 220 for the non blend composition.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference between the product of a product-by-process claim and a prior art product which

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reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

Claims 27-49 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Van Brederode et al. (US 3966845).

Patentees disclose a composition in which the secant modulus and tensile strength are improved by adding grafted polyolefin (Abstract; column 2, lines1-6)Note Table II indicating that only a very small amount (i.e. 1%) may be added to improve flexural modulus and tensile strength and therefore the effect of adding the small amount of graft appears to be more than merely additive with respect to these characteristics.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al., 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Product-by-process claims are not rejected using the approach set out in Graham v. Deere. It is applicant's burden to show that there is a non-obvious difference

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between the product of a product-by-process claim and a prior art product which reasonably appears to be the same or only slightly different whether or not the prior art product is produced in the same manner as the claimed product. Note In re Marosi, 218 USPQ 289, 292-293 (CAFC 1983); In re Brown, 173 USPQ 685 (CCPA 1972) and In re Thorpe, 227 USPQ 964 (CAFC 1985) in this regard.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis at telephone number 571 272 1075.

Jeffrey C. Mullis  
Primary Examiner  
Art Unit 1796

JCM

3-7-08

/Jeffrey C. Mullis/

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